IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.328 of 2005
BRANCH MANAGER , ORIENTAL INSU
Versus
DEO NARAYAN SAHNI & ORS

For the appellant: Mrs. Seema,Advocate

For the respondents: Mr.Ashok Kr. Jha,Advocate.

7. 30.7.2008 The order under challenge is dated 26.5.2005 passed by District Judge 1st.-cum-Motor Accident Claims Tribunal, Begusarai, in MACT case no. 13/2003, whereby and whereunder he has directed the appellant M/S Oriental Insurance Co. Ltd. to pay Rs.1,86,000/- with interest at the rate of 6% per annum from the date of filing of the petition till realization of the amount.

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A claim case was filed by the husband and children of the deceased in respect of death of Jyoti Devi, aged about 45 years, who was crushed down under wheels of Mini Bus bearing registration no. BR-9A-5589 on 9.7.2002 in village Garkhauli under the jurisdiction of Cheria Bariarpur P.S., in the district of Begusarai. The victim ultimately succumbed to injuries for which FIR of Cheria Bariarpur P.S.case no. 72 of 2002 under Sections 279 and

304A IPC against the driver and khalasi of the vehicle was drawn and chargesheet was submitted.

Learned counsel for the appellant as also learned counsel for the respondents-claimants have been heard.

Learned counsel for the appellant has not challenged so far place of occurrence, manner of accident and liability on the Insurance Company to pay the amount is concerned. The only point which was raised here on behalf of the appellant is non-application and non-consideration in respect of the quantum of compensation. According to learned counsel for the appellant, Rs.15,000/- each for loss of consortium and loss of estate has been granted by the Tribunal, which ought to have been as prescribed under the law not more than Rs.2,500/- and Rs.5000/- respectively. In this way, in stead of Rs.5000/- plus Rs.2,500/- i.e., total Rs.7,500/- the award for payment of Rs.15,000/- each on both counts seems to have been given and, so, Rs.22,500/- could be said to have been given in excess.

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I find force and substance in such contention of learned counsel for the appellant. So, this amount should be reduced from Rs.30,000/-

(Rs.15,000/- + Rs.15,000/-) to Rs.7,500/- (Rs.2,500/- + Rs.5,000/-).

Next point, which has been urged on behalf of the appellant is in respect of calculation of compensation amount on the basis of her earning. Emphasis has been given that deceased was said to have been earning her livelihood as self employed tailor and for that it was claimed that she was earning Rs.2000/- per month and the Tribunal has considered Rs.1,500/- per month, i.e., Rs.18,000/- per annum, which fact has not been supported from any independent witness of the village or from any document. So, in that situation, the income of a house wife or any unskilled labourer should have been assessed at Rs.15,000/- per annum. The evidence of only interested persons, i.e., children of the deceased, has been brought on the record so as to say that she was earning Rs.2000/- per month. There is nothing on the record to show that she ever under went for training for such specialized skill or has ever done any job or served any customer nor any customer has ever been produced to say that she was earning as a tailor.

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In that context of the matter, the income of the deceased should have been not more than Rs.15,000/- per annum, and after deducting 1/3rd of the same, it comes to Rs.10,000/- per annum and multiplying the same by 13 it should have been Rs.1,30,000/-.

But I do not find any substance so far multiplication by 13 is concerned in view of the fact that age of the deceased has been found about 45 years and as per Schedule II of the Act it should have been 15.

Considering everything in totality, there should be payment of compensation by applying multiplication 15, at the rate of Rs.10,000/- per annum, which comes to Rs.1,50,000/- + Rs.7,500/- as loss of estate & consortium i.e. Rs. 1,57,500/- with 6% interest till payment within one month, failing which interest rate shall be chargeable at rate of 9% per annum from the Insurance Company for the said period as ordered in the impugned judgment.

With the aforesaid observation, the appeal stands disposed of.

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Rs.25,000/-, which has been deposited here, may be sent back to the court below for its payment to the claimants.

(Subash Chandra Jha,J.)

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